IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11353 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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ANIL P SINGH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11353 of 2001
   MR RM PARMAR for Petitioner No. 1
   MR K.P. RAWAL, A.G.P for Respondent No. 1-3
   MR AR THAKKER for Respondent No. 4

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 19/04/2002

ORAL JUDGEMENT

Rule. Service of rule is waived by learned A.G.P. Shri K.P. Rawal for respondents nos. 1, 2 and 3 and service of rule is waived for respondent no. 4 by

learned advocate Shri A.R. Thakker. At the request of the learned advocates, the petition is finally heard today.

2. The petitioner is a student prosecuting his studies for M.D. (Pharmacology). He was given admission for his post graduate studies on a non-stipendiary post. In pursuance of Government Resolution dated 24th April, 2000 annexed to the petition as Annexure B, the petitioner applied to respondent no. 2 for stipendiary study so that while prosecuting his studies for M.D., the petitioner can also get stipend from the Government authorities. The petitioner had also addressed a letter to respondent no. 3 making a similar request. As the request made by the petitioner for giving him Stipend for his study had not been decided either by respondent no. 2 or by respondent no. 3, the petitioner has approached this Court with a prayer that respondents nos. 2 and 3 be directed to give stipendiary residency to the petitioner.

3. In pursuance of notice issued by this Court, respondent no. 3 has filed an affidavit stating that the petitioner had passed Ist and IInd M.B.,B.S from Jammu & Kashmir. Because of disturbances prevailing in the State of Jammu & Kashmir, the petitioner had migrated to Gujarat and he passed his IIIrd M.B.,B.S from Saurashtra University. Looking to the said fact, the petitioner was not treated as a student from Gujarat or from Saurashtra University and, therefore, the petitioner cannot have a right to claim residency as he had been considered as a student passing not from Gujarat State.

4. I have heard the learned advocates. It is not in dispute that the petitioner passed his IIIrd M.B.,B.S from Saurashtra University which is in Gujarat. The learned advocates have drawn my attention to the judgement delivered by this Court in Special Civil Application No. 3294/1999 decided on 30th June, 1999. The petitioner in the said petition was also a student who had initially studied in Jammu & Kashmir and had migrated to Gujarat and completed his studies of IIIrd M.B.,B.S from Saurashtra University. As the petitioner in the said petition was not treated as a student of Saurashtra University, the petition was filed by him and it was ultimately held by this Court that as the petitioner had passed IIIrd M.B.,B.S examination from Saurashtra University, the said students should be treated as a student from Saurashtra University and accordingly he should be given all benefits. The judgement delivered in Special Civil Application No.

3294/1999 had been challenged by other students by filing L.P.A. No. 927/1999. The said appeal was dismissed on 25th August, 1999. Thus, the view expressed by the learned Single Judge in the judgement delivered in Special Civil Application No. 3294/19999 has been confirmed by the Division Bench of this Court.

5. In view of the fact that the learned advocates have stated that the facts of the present case and the facts of the case decided in Special Civil Application No. 3294/1999 are similar and as legal issues involved in both the petitions are the same, the petitioner must be treated as a student of Saurashtra University and he must be given all the benefits which are given to the students of Saurashtra University.

6. Looking to the above referred legal position, in my opinion, respondent no. 3 cannot be permitted to say that the petitioner is not a student of Saurashtra University or he is not a student of Gujarat. In the circumstances, the case of the petitioner must be considered on merits, and if upon his academic performance, he is entitled to residency, he must be given the benefit of stipend as decided by the State of Gujarat under its Resolution dated 24th April, 2000.

7. In the circumstances, the respondents are directed to reconsider the case of the petitioner for giving him residency on the basis of his merits, as if he is a student who has passed M.B.,B.S form Saurashtra University. The concerned respondent shall take appropriate decision within two months from the date of receipt of this order.

Rule is made absolute to the above extent with no order as to costs.

(A.R DAVE,J.)

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